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To:	Examiner Michael A. Lyons Group 2877 UNITED STATES PATENT AND TRADEMARK OFFICE	From:	Frank Caufield
	FAX No.: 703 872 9306	Date:	June 4, 2004
Subject:	**APPLICATION NO10/053,741 REQUEST AFTER FINAL FOR RECONSIDERATION AFTER TELEPHONIC INTERVIEW (Case No. 0250/US)**		
Pages:	Number in addition to this sheet: 4		

message:

Dear Examiner Lyons:

Attached please find a <u>REQUEST AFTER FINAL REJECTION FOR RECONSIDERATION AFTER TELEPHONIC INTERVIEW TO ALLOW APPLICATION.</u>

Thank you for your attention to this matter.

Very truly yours,

Francis J. Caufield

Francis J. Caufield
Registration No. 27,425

cc: SPE Frank G. Font @ 571 273 2415

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CERTIFICATE OF FACSIMILE

I hereby certify that this document (along with any documents referred to as being attached or enclosed) is being facsimile transmitted to Group 2877, Examiner Michael A. Lyons, at the United States Patent and Trademark Office on the date shown below at facsimile number 703 872 9306.

Date: June 4, 2004 Signature: Francis J. Caufield

Francis J. Caufield
Registration No. 27,425

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.	:	10/053,741
Applicant	:	Michael Kuechel
Filed	:	January 22, 2002
Title	:	APPARATUS AND METHOD(S) FOR REDUCING THE EFFECTS OF COHERENT ARTIFACTS IN AN INTERFEROMETER
TC/A.U.	:	2877
Examiner	:	Michael A. Lyons
Docket No.	:	0250/US

Mail Stop AF
Honorable Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

REQUEST AFTER FINAL REJECTION FOR RECONSIDERATION AFTER TELEPHONIC INTERVIEW TO ALLOW APPLICATION

Sir:

A final Office Action was mailed in this application on April 19, 2004 rejecting claims 1, 25, 53, 70 and 85-88 under the judicially created doctrine of obviousness-type double patenting while claims 2-24, 26-52, 54-69, and 71-84 have been objected to but otherwise indicated allowable if rewritten in independent form including all limitations of their base and any intervening claims. Because significant issues developed during prosecution which were not fully clarified nor resolved in writing, it was believed that a personal interview would allow for a better exchange of views on these issues and likely would advance the prosecution of this application to issue. Accordingly, I requested a personal interview with the Examiner via fax early in the

day on June 3, 2004, and in response to my fax, a telephonic interview was held later on the same day.

During the interview, it was pointed out, for the reasons set forth below and discussed during the interview, that Applicant believed that (1) the obviousness-type double patenting rejection was improper because there is no demonstrable common ownership between this application and issued U.S. Patent No. 6,643,024 ('024 patent), (2) the claims of this application and those of the '024 patent are patentably distinct from one another, and (3) the '024 patent is not available as prior art with respect to this application.

First of all, the Judicially Created Obviousness Type Double Patenting Rejection was created by the judiciary to prevent the acquisition by a common owner of multiple patents containing claims to inventions that are not patentably distinct from one another, even though the claims might not be identical. The purpose of the doctrine is to prevent such patents from issuing so that a single ownership entity cannot unjustifiably extend the right to exclude and to prevent possible harassment by multiple assignees. For this rejection to be asserted, however, there must be a clear showing of actual common ownership. Otherwise, the rejection has no basis because the reason for asserting it has no factual support in the first instance.

Common ownership or "commonly owned" is defined in MPEP 706.02(1)(2), Paragraph I. DEFINITION OF COMMON OWNERSHIP. It simply means that the same person(s) or organization(s) owns the claimed inventions. If they are not commonly owned by the same entity, there is no single owner who can extend a monopoly, unlawful or otherwise. This is a factual matter subject to verification by credible evidence rather than unsubstantiated speculation.

MPEP 706.02(1)(2) Page 700-53, sets forth the evidentiary requirements to establish common ownership. What is required is a clear and conspicuous statement of common ownership in the record. Applicant respectfully submits that similar drawings, a mention of the name of the purported common owner in the pending application; and/or the appearance of name of the purported common owner in the computer path for a document submitted during prosecution are not legally recognizable indicia of common ownership. Indeed, no tenable evidence of common ownership in this application exists, and an examination of the Office's assignment records should corroborate this. Consequently, the obviousness-type double patenting rejection should be withdrawn.

The claims of this application define a patentably distinct invention when properly compared with those of issued us patent No. 6,643,024 because:

1. The Office improperly compared the claims of the present application with those of the issued '024 patent since the comparison made was not of the claims ***as a whole*** but of only one their respective elements. This is improper because it does not compare the inventions as defined by all of their claimed elements.

2. The issuance of the '024 patent itself is strong evidence that the claims of the issued '024 patent are patentably distinct from the claims of the present application because the '024 patent was issued prior to this application. Clearly, the Office would not have issued the '024 patent with claims that were not patentably distinct from those of the present application. After all, both applications were pending at the same time, in the same GAU, and under the supervision of the same SPE. Because the '024 patent issued, the Office has already decided that the claims of the issued patent '024 and those of the present invention are patentably distinct from one another. Therefore, the Office's persistence now in the notion that they are not amounts to a victimization of the present Applicant with inconsistent Office decisions regarding the very same claimed inventions that were under consideration during the examination of the '024 patent. Under the doctrine of administrative regularity, both the Applicant and the public are entitled to rely on consistency in the Office's application of its governing rules and statutory mandates.

Moreover, the Office Action marginalized the decision of the Examiner of the '024 patent which found that different groups of claims in that patent were sufficiently patentably distinct from one another to support a restriction requirement among them. That decision, and the fact of the issuance of the '024 patent, collectively are further evidence that the present claims are patentably distinct from those of the '024 patent and that there is inconsistency on the part of the Office in its treatment of the subject matter involved in these applications.

Finally, it was pointed out that the '024 patent is not a reference with respect to this application, and in view, among other things, of CHART II-B of the MPEP at Page 800-16, the only sensible conclusion to be drawn from the interview was that the application should be allowed. Agreement as to this conclusion was reached.

Accordingly, Applicant respectfully requests the Office to allow this application and pass it to issue.

Should there be any further issues or questions, please feel free to contact me at the numbers below.

In closing, I wish to extend my appreciation to the Office for granting the interview and to the Examiners for the courteous and professional treatment they extended to me during the interview.

Respectfully submitted,

June 4, 2004
Date

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